

REMARKS/ARGUMENTS

Claims 1, 3-5, 7-12, 14-21 and 23-26 remain pending in the instant application. Claims 1 and 3-6 stand rejected. Claims 7-12, 14-21 and 23-26 have been allowed.

1. Description of the Amendments to the Claims

Claim 1 has been amended to incorporate the subject matter of claim 6. Claim 6 has therefore been canceled. Claims 3-5 have been amended to reflect the amendment to claim 1. No new matter is introduced into the application by way of these amendments.

2. Rejection of Claims 1 and 3-5 Under 35 U.S.C. 102(a)

Claims 1 and 3-5 stand rejected under 35 U.S.C. 102(a) as being anticipated by WO 2004/047774 to Kelly et al.

As described above, Applicants have amended claim 1 to incorporate the subject matter of claim 6. As claim 6 was not included in the 102(a) rejection over Kelly, the Official Action impliedly acknowledges that Kelly fails to disclose the subject matter of claim 6. This is confirmed by a careful review of Kelly. Kelly discloses a gel comprising a mixture of S-sulfonated keratin protein fractions and polyvinylpyrrolidone (PVP). There is no disclosure in Kelly of a film, fiber or membrane comprising a mixture of S-sulfonated keratin protein fractions and PVP. Accordingly, the incorporation of the subject matter of claim 6 into claim 1 renders claim 1 novel over the Kelly reference.

Applicants believe claim 1 is allowable, at least, for this reason.

Applicants believe claims 3-5 are allowable, at least, because they depend from claim 1.

3. Provisional Non-Statutory Obviousness-Type Double
Patenting Rejection of Claims 1 and 3-6

Claims 1 and 3-6 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 23-29 of co-pending Application No. 10/583,445.

The Official Action urges that while the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending claims anticipate the claims 1 and 3-6. Specifically, the Official Action urges that the co-pending claims recite a membrane comprising a mixture of S-sulfonated keratin fraction and PVA or PVP.

Applicants respectfully disagree with the allegation that claims 1 and 3-6 of the instant application are not patentably distinct from claims 23-29 of the co-pending application. Firstly, with respect to claims 23 and 24 of the co-pending application, neither claim recites PVA or PVP, and therefore neither claim anticipates claims 1 and 3-5 of the instant application. Secondly, with respect to claims 25-29 of the co-pending application, each of the claims recite a hydrogel rather than a film, fiber, or membrane, and therefore none of the claims anticipate claims 1 and 3-5 of the instant application.

In view of the above, Applicants respectfully submit that claims 1 and 3-5 of the instant application are patentably distinct from the claims of the co-pending application and therefore the obviousness-type double patenting rejection should be withdrawn.

Regardless of the above, Applicants respectfully submit that, pursuant to MPEP 804.I.B.1, the provisional obviousness-type double patenting rejection should be withdrawn in the instant application. This section of the MPEP states that if a provisional obviousness-type double patenting rejection between two applications is the only rejection remaining in the earlier filed of the two applications, the examiner should withdraw the obviousness-type double patenting rejection in the earlier filed application to thereby permit that application to issue without requiring a terminal disclaimer to be filed. Applicants respectfully submit that the above circumstances

apply to the instant application. Firstly, based on the PCT filing dates of the two applications, the instant application is the earlier filed of the two applications. Secondly, in light of the fact that the 102(a) rejection of claims 1 and 3-5 set forth in the outstanding Official Action has been overcome (see Section 2, *supra*), the only rejection remaining in the instant application is the provisional obviousness-type double patenting rejection.

Accordingly, withdrawal of the obviousness-type double patenting rejection of claims 1 and 3-6 is respectfully requested.

4. Conclusion

In light of the amendments and remarks provided herein, applicants respectfully request the issuance of a Notice of Allowance.

Respectfully submitted,
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